

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERIC ARDOIN,

No. C-11-5564 EMC (pr)

Petitioner,

v.

MIKE McDONALD,

Respondent.

**ORDER GRANTING PETITIONER'S
MOTION TO EXTEND TIME TO FILE
A NOTICE OF APPEAL; AND
CONSTRUING NOTICE OF APPEAL AS
TIMELY FILED**

(Docket Nos. 23-24)

This is a closed federal habeas corpus action. The habeas petition was denied and judgment was entered in favor of Respondent on February 13, 2013. Petitioner has filed (Docket No. 23) a notice of appeal ("NOA"), and a motion for an extension of time to file the NOA. (Docket No. 24.)

Petitioner's motion for an extension of time is **GRANTED**. An appeal of right may be taken only by filing a valid NOA in the district court within the time allowed by Fed. R. App. P. ("FRAP") 4. *See* FRAP 3(a)(1). The NOA must be filed within 30 days after judgment is entered. *See* FRAP 4(a)(1). Under this rule, Petitioner should have filed his NOA no later than March 15, 2013. His NOA was filed roughly two weeks after that, on April 1, 2013. (Though stamped as received on April 8th, for purposes of the present motion the Court assumes that Petitioner put the motion in the prison mail the day he signed it and will use that as the filing date under the prisoner mailbox rule. *See* generally *Houston v. Lack*, 487 U.S. 266, 276 (1988).)

Relief from the deadline for filing an NOA may be obtained by a motion in the district court under FRAP 4(a)(5) (motion for an extension of time) or 4(a)(6) (motion to reopen time to file

1 appeal). FRAP 4(a)(5) allows a motion for an extension of time if the party requests it within thirty
2 days of the expiration of the time to file the notice and shows an excusable neglect or good cause.

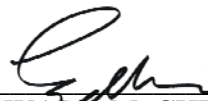
3 Here, that means that under FRAP 4(a)(5), Petitioner must have requested an extension of
4 time within 30 days after March 15, 2013, viz., on or before April 14, 2013. Petitioner's motion was
5 signed on April 1, 2013, and therefore is timely filed within the meaning of FRAP 4(a)(5). The
6 Court also finds that Petitioner has shown good cause.

7 The extension having been granted, the Court construes the already-filed NOA (Docket No.
8 23) as timely filed. The Clerk of the Court shall amend the docket to reflect this conclusion and
9 shall process Petitioner's appeal.

10 This order disposes of Docket No. 24.

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12 IT IS SO ORDERED.

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14 Dated: May 6, 2013

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17 EDWARD M. CHEN
18 United States District Judge
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